

UNITED STATES DISTRICT COURT **Apr 19, 2016**  
EASTERN DISTRICT OF WASHINGTON SEAN F. McAVOY, CLERK

BENITO CERVANTES, an  
individual,

Plaintiff,

v.

FOREMOST INSURANCE  
COMPANY, a foreign insurer,

Defendant.

No. 1:15-CV-03172-SMJ

**ORDER DENYING PLAINTIFF'S  
MOTION FOR PARTIAL  
SUMMARY JUDGMENT AND  
GRANTING DEFENDANT'S  
CROSS-MOTION FOR SUMMARY  
JUDGMENT**

**I. INTRODUCTION**

Before the Court is Plaintiff Benito Cervantes' Motion for Partial Summary Judgment, **ECF No. 7**, and Defendant Foremost Insurance Company's (hereinafter "Foremost") Cross-Motion for Summary Judgment, **ECF No. 10**. The Court, having reviewed the pleadings and file in this matter, is fully informed and for the reasons discussed below **DENIES** Plaintiff's Partial Summary Judgment Motion **ECF No. 7**, and **GRANTS**, DEFENDANT'S Cross-Motion for Summary Judgment, **ECF, No. 10**.

**II. BACKGROUND**

**A. Factual History<sup>1</sup>**

<sup>1</sup> In ruling on the motion for summary judgment, the Court has considered the facts and all reasonable inferences therefrom as contained in the submitted affidavits, declarations, exhibits, and depositions, in the light most favorable to the party opposing the motion. See *Leslie v. Grupo ICA*, 198 F.3d 1152, 1158 (9th Cir. 1999).

1       Foremost Insurance Company, Grand Rapids, Michigan (hereinafter  
2 “Foremost”) issued Plaintiff Benito Cervantes (hereinafter “Plaintiff”) a  
3 Commercial Mobile Home Policy, policy no. 444-0019276305, effective  
4 November 21, 2014. The policy insured a mobile home owned by Plaintiff  
5 located at 7610 West Knob Hill Boulevard, #143, Yakima, WA 98909. The  
6 Foremost policy provides coverage for “direct, sudden, and accidental loss.” ECF  
7 No. 7-1 at Exhibit A. The mobile home at issue was occupied by persons other  
8 than Plaintiff. Shortly before a visit in mid-February, 2015, Plaintiff was  
9 informed of possible water damage to the property. ECF No. 7-1. When he  
10 visited in mid-February, Plaintiff discovered substantial damage, including water  
11 damage. Id. Plaintiff promptly informed Foremost, who assigned an adjuster  
12 (Lawrence Argento) to evaluate the claim. Id. Mr. Argento discussed the damage  
13 with Plaintiff who admitted not knowing how long the leak had been occurring.  
14 ECF 12 at 2. Foremost contracted with American Leak Detection (hereinafter  
15 “ALD”) specializing in water leak assessments. ALD determined that multiple  
16 water leaks causing the damage to the bottom of the cabinets in both bathrooms  
17 and kitchen had a duration of up to one year. ECF 12-4 at 3. Plaintiff has not  
18 presented an expert opinion refuting ALD’s assessment. As a result, on April 7,  
19 2015, Foremost denied the claim for coverage indicating that their investigation  
20 determined that the water damage was a result of “...wear and tear, neglect, and

1 long term exposure to water moisture.” ECF No. 1-2 at Attachment A. On July  
2 20, 2015, Plaintiff requested Foremost to reconsider. In a letter dated July 27,  
3 2015, Foremost stood by its original denial of coverage. Plaintiff then filed suit.

4 **B. Procedural History**

5 Plaintiffs filed the Complaint on August 17, 2015 in the Superior Court of  
6 Washington for Yakima County, which was assigned case number 15-2-02319-4.  
7 Foremost was served a copy of the Summons and Complaint on September 8,  
8 2015. Foremost filed a timely Notice of Removal on September 28, 2015, under  
9 28 U.S.C. §1446.

10 On November 10, 2015, Plaintiff filed a Motion for Partial Summary  
11 Judgment, asking the court to find as a matter of law, that the words “sudden” and  
12 the phrase “sudden and accidental” as used in the Foremost policy at issue means  
13 “unforeseen and unexpected from the perspective of the insured.” Further, it  
14 requests that the Court find that Foremost breached its contract for insurance by  
15 denying Plaintiff’s claim for damages.

16 On December 3, 2015, Foremost submitted a Response to Plaintiff’s  
17 Motion for Partial Summary Judgment along with a Cross-Motion for Summary  
18 Judgment regarding Plaintiff’s contractual and extra-contractual claims. Foremost  
19 argues that it denied coverage for Plaintiff’s claim due to the fact that the damage  
20 at issue was the result of long-term and continuous water leakage and seepage.

1 Foremost argues that the policy provides coverage only for “direct, sudden, and  
2 accidental loss.” Foremost indicates that the uncontroverted report from an  
3 independent leak specialist, ALD, establishes that the loss at issue was not sudden.  
4 Rather, they indicate, the loss was the result of long-term, continuous water  
5 leakage and seepage in the subject property. As such, Foremost argues that the  
6 denial of coverage was proper. Moreover, Foremost asks the Court to issue an  
7 order denying Plaintiffs request for partial summary judgment and in turn, grant  
8 Foremost’s motion for summary judgment.

### 9 **III. MOTIONS FOR SUMMARY JUDGMENT.**

#### 10 **A. Legal Standard**

11 Summary judgment is appropriate if the “movant shows that there is no  
12 genuine dispute as to any material fact and the movant is entitled to judgment as a  
13 matter of law.” Fed. R. Civ. P. 56(a). Once a party has moved for summary  
14 judgment, the opposing party must point to specific facts establishing that there is  
15 a genuine dispute for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). If  
16 the nonmoving party fails to make such a showing for any of the elements  
17 essential to its case for which it bears the burden of proof, the trial court should  
18 grant the summary judgment motion. *Id.* at 322. “When the moving party has  
19 carried its burden under Rule [56(a)], its opponent must do more than simply  
20 show that there is some metaphysical doubt as to the material facts. . . . [T]he

1 nonmoving party must come forward with ‘specific facts showing that there is a  
2 genuine issue for trial.’” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475  
3 U.S. 574, 586-87 (1986) (internal citation omitted) (emphasis in original). When  
4 considering a motion for summary judgment, the Court does not weigh the  
5 evidence or assess credibility; instead, “the evidence of the non-movant is to be  
6 believed, and all justifiable inferences are to be drawn in his favor.” *Anderson v.*  
7 *Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). When considering the summary  
8 judgment motion, the Court 1) took as true all undisputed facts; 2) viewed all  
9 evidence and drew all justifiable inferences therefrom in non-moving party’s  
10 favor; 3) did not weigh the evidence or assess credibility; and 4) did not accept  
11 assertions made that were flatly contradicted by the record. *See Scott v. Harris*,  
12 550 U.S. 372, 380 (2007); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255  
13 (1986).

#### 14 **B. Insurance Policy Language**

15 In Washington, insurance policies are construed as contracts. *Findlay v.*  
16 *United Pac. Ins. Co.*, 129 Wn.2d 368, 378, 917 P.2d 116 (1996). The  
17 interpretation of insurance policy language is a question of law. *See Roller v.*  
18 *Stonewall Ins. Co.*, 115 Wash.2d 679, 682, 801 P.2d 207 (1990). An insurer has  
19 the burden of proving that a claim falls within the scope of an exclusion. *Queen*  
20 *City Farms v. Central Nat’l Ins. Co. of Omaha*, 126 Wash.2d 50, 65, 891 P.2d 718

(1995). “Exclusionary clauses in insurance policies are strictly construed against the insurer.” *Stouffer & Knight v. Cont'l Cas. Co.*, 96 Wash.App. 741, 747, 982 P.2d 105 (1999). The Court must construe an insurance policy as a whole, giving full force and effect to each clause. *Overton v. Consol. Ins. Co.*, 145 Wn.2d 417, 424, 38 P.3d 322 (2002). Where policy language remains clear and unambiguous, the Court will enforce the provisions as written and not modify the policy or create ambiguity where none exists. *Pub. Util. Dist. No. 1 v. Int'l Ins. Co.*, 124 Wn.2d 789, 797, 881 P.2d 1020 (1994). Ambiguity exists if the policy is susceptible to more than one reasonable interpretation. *Transcon. Ins. Co. v. Wash. Pub. Util. Dists' Util. Sys.*, 111 Wn.2d 452, 456-57, 760 P.2d 337 (1988). An ambiguous provision must be construed in favor of the insured. *Transcon.*, 111 Wn.2d at 457. The definition of terms at issue must be decided according to Washington law. *See Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938). If a term is left undefined, it is given the plain and ordinary meaning found in a Standard English dictionary. *Overton v. Consol. Ins. Co.*, 145 Wn.2d 417, 428 (2002). A policy should be interpreted in a way that gives effect to each provision. *McDonald v. State Farm Fire & Cas. Co.*, 119 Wash.2d 724, 734, 837 P.2d 1000 (1992).

**C. Breach of Contract**

1 In order for a party to present a claim for breach of contract, the party must  
2 establish the following elements. A plaintiff in a contract action must prove a  
3 valid contract between the parties, breach, and resulting damage. *Lehrer v. State,*  
4 *Dept. of Social and Health Services*, 101 Wn.App. 509, 516, 5 P.3d 722 (2000)  
5 citing *Northwest Independent Forest Mfrs. V. Department of Labor & Indus.*, 78  
6 Wn.App. 707, 712, 899 P.2d 6 (1995).

7 In the context of an insurance claim, the insured bears the initial burden of  
8 proof in establishing that the loss is covered. Only if the insured meets this  
9 burden of proof in establishing that a claim is potentially covered, does the burden  
10 shift to the insurer to establish a controlling exclusion or limitation. *McDonald,*  
11 *supra* at 731. *Overton, supra* at 431-432.

#### 12 **D. Discussion**

13 Plaintiff presents an unpersuasive argument that the language “sudden” and  
14 the phrase “sudden and accidental” as used in the Foremost policy, means  
15 “unforeseen and unexpected from the perspective of the insured.” Since these  
16 terms are not defined under the Foremost policy, the Court must determine their  
17 definition in the context of Washington Law and their plain and ordinary meaning  
18 in the context of the policy itself.

19 Plaintiff contends that pursuant to *Queen City Farms*, the term “sudden”  
20 can be construed as “unforeseen and unexpected” from Plaintiff’s perspective.

1 *Queens City Farms* is distinguishable from the present case. First, the Supreme  
2 Court defined “sudden” and “unexpected” in the context of CGL policies  
3 containing the qualified pollution exclusion. *Queen City Farms, Inc. v. Central*  
4 *Nat’l Ins. Co.*, 126 Wash.2d 50, 91 (1994). Further the Court indicated

5 ...reading "sudden" as having a temporal meaning,  
6 like beginning abruptly, or occurring over a short period  
7 of time, or instantaneous, also leads to problems in construing  
8 the language. In each of the exclusions there are words suggesting  
9 a gradual release or discharge, i.e., "leakage" and "seepage".  
10 It does not make sense to speak of an abrupt, instantaneous  
11 seepage or leakage, nor of seepage or leakage occurring over  
12 a short period of time.

13 *Queen City Farms*, 126 Wn.2d at 95. The term “sudden” was not used in the same  
14 way in the Foremost policy. Second, the insurance policies at issue in *Queen City*  
15 *Farms* were third-party commercial general liability and excess policies; not first-  
16 party property policies. Finally, the term “sudden” in the context of the Foremost  
17 policy is clear and unambiguous. Pursuant to the Merriam-Webster dictionary,  
18 sudden is defined as happening or coming unexpectedly; marked by or  
19 manifesting abruptness or haste; and made or brought about in a short time.  
20 Merriam-Webster’s Online Dictionary, April 19, 2016. The Court cannot find a  
reasonable alternative meaning to the word “sudden” than its plain meaning in the  
context of this policy. Moreover, the loss at issue was caused by the slow and  
continuous leaking of water that continued for a period of up to a year. That is not  
“sudden”. The damage to Plaintiff’s property did not abruptly manifest nor was it



1 brought about in a short time. It cannot be said that the damage was “sudden.”  
2 Thus, applying their plain and ordinary meaning, “sudden” and “sudden and  
3 accidental” cannot mean from the perspective of the insurer in the context of this  
4 particular policy.

### 5 **III. CONCLUSION.**

6 The policy of insurance issued by Foremost to Plaintiff does not provide  
7 any coverage for Plaintiff’s claim or the loss or losses that comprise the subject  
8 matter of this lawsuit. Likewise, Foremost did not breach the policy of insurance  
9 issued by Foremost to Plaintiff. Plaintiff has failed to establish any genuine issue  
10 of material fact relating to the elements of his cause of action for violation of the  
11 Washington Insurance Fair Conduct Act, RCW 48.30.015. Further, Plaintiff is not  
12 entitled to recovery of attorneys’ fees, expert witness fees, costs, or interest.

13 **IT IS HEREBY ORDERED** that:

14 1. Plaintiff’s Motion for Partial Summary Judgment, **ECF No. 7, is**  
15 **DENIED.**

16 2. Defendant Foremost’s Cross-Motion for Summary Judgment, **ECF**  
17 **No. 10, is GRANTED.**

18 3. All pending motions are DENIED AS MOOT.

19 4. All pending deadlines and hearings are STRICKEN.


20 5. The Clerk’s Office shall CLOSE this file.

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**IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and provide copies to all counsel.

**DATED** this 19<sup>th</sup> day of April 2015.

  
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SALVADOR MENDEZ, JR.  
United States District Judge